

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO
VILLATORO, MISAEAL ALEXANDER MARTINEZ
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA
MOREIRA and MATEO UMANA individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW,
JOHN KELLY and JOSEPH PROVENZANO,

Defendants.

Case No. 1:21-CV-09014
(PAE)(SDA)

**DECLARATION OF EDUARDO NARVAEZ IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION PURSUANT TO 29 U.S.C. § 216(b)**

I, Eduardo Narvaez, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of Defendants' Opposition to Plaintiffs' Motion for Conditional Certification pursuant to 29 U.S.C. § 216(b). I am personally familiar with the facts set forth below and submit this declaration based on my personal knowledge.

2. I am a resident of Brentwood, New York.

3. I currently work for both Kelco Construction and ELM as a foreman. I have been working for Kelco Construction and ELM since approximately 1999.

4. As a foreman, I generally supervise a crew of three (3) to four (4) workers and instruct them on whatever work has to be completed.

5. I am a union member of Local 731.

6. I also drive the company vehicle into New York City sites for work. I pick up the

company vehicle at the Hauppauge facility around 4:30 a.m.

7. I usually drive into the jobsites alone because I must visit multiple work sites. However, on some rare occasions, when some employees need a ride into the jobsite in New York City, I pick up other employees from the park-and-ride locations in Commack or Glen Cove, New York. This occurred only when necessary and on an as-needed basis for only one (1) to two (2) workers.

8. The workers I pick up from the park-and-ride location do not perform any work prior to commuting into the New York City jobsites in the company vehicle I drive.

9. On average, it takes approximately forty-five (45) minutes to fifty (50) minutes to drive to the jobsites in New York City from the Commack park-and-ride location or from the Hauppauge facility. It takes me approximately two (2) hours, due to traffic conditions, to drive back to this park-and-ride location to drop off other workers at the end of the workday.

10. On average, it takes approximately thirty (30) minutes to drive to the jobsites in New York City from the Glen Cove park-and-ride location. It takes me approximately two (2) hours, due to traffic conditions, to drive back to this park-and-ride location to drop off other workers at the end of the workday.

11. To compensate me for this time that I spend driving, ELM pays me three (3) hours of drive time at a rate of \$20.00 per hour (for a total of \$60.00 per day).

12. At the end of the workday, I occasionally prepare the company vehicle for the following day. It takes me about fifteen (15) to thirty (30) minutes to perform this task. I typically inform either Salvador Contrera or Neftali Contrera, both being supervisors, the amount of time it took me to perform this task. Either supervisor then makes a note of this and Kelco Construction pays me a regular hourly rate of \$20.00 for the amount of time it took me to prepare the company

vehicle for that day.

13. I typically work for Kelco Construction approximately eight (8) hours per day, five (5) days per week.

14. I sometimes work an extra day of the week, for a total of six (6) days. In a year, I may have worked this extra day of the week six (6) or seven (7) times. This extra day of work for the week is either for Kelco Construction or ELM.

15. My primary language is Spanish. On January 24, 2023, Luis Lopez, CCI verbally translated this declaration to me in Spanish. I fully understand the contents of this declaration in my primary language.

16. This declaration was prepared by counsel for Defendants in the action based on an interview in which I voluntarily participated. I was advised that I could end the interview at any time. I have also been told by counsel for the Defendants that I should sign this declaration if I want to and if everything within it is true and correct to the best of my knowledge, information, and belief. I have been given a full opportunity to review this declaration carefully and freely and make any corrections and additions of any kind.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: January 24, 2023


Eduardo Narvaez